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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,831	05/26/2006	Keizou Kanzaki	Q94272	8297
23373                      7590                      11/27/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
NELSON, MICHAEL B				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
11/27/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sughrue@sughrue.com  
PPROCESSING@SUGHRUE.COM  
USPTO@SUGHRUE.COM

### Office Action Summary

**Application No.**

10/580,831

**Applicant(s)**

KANZAKI, KEIZOU

**Examiner**

MICHAEL B. NELSON

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 6-15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1 and 6-15 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/11/09 has been entered. Claims 1, 6-15 are currently under examination on the merits. The previous 112 issue is withdrawn as a result of applicant's amendment.

***Examiner's Note***

2. The use of product-by-process limitations has been noted in Claim 1, such as, for example, "printing" layer. Even though a product-by-process is defined by the process steps by which the product is made, determination of patentability is based on the product itself. In re Thorpe, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). As the court stated in Thorpe, 777 F.2d at 697, 227 USPQ at 966 (The patentability of a product does not depend on its method of production. In re Pilkington, 411 F.2d 1345, 1348, 162 USPQ 145, 147 (CCPA 1969). If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1, 6, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshima et al. (U.S. 4,834,247), in view of Tucker (U.S. 2003/0155354) and further in view of Ewan (U.S. 5,294,470).

Regarding claim 1, Oshima et al. discloses a hermetically heat-sealed plastic food container with a vapor release seal part which opens at high pressures (See Abstract). Oshima et al. does not disclose markings which indicate when the vapor release seal part is opened. Tucker discloses a plastic food container which vents during microwave cooking ([0096]) and which is provided with differing colors for the lid and the base material in order to indicate whether the lid is opened (i.e. venting) or closed ([0137]-[0138]).

The inventions of both Oshima et al. and Tucker are drawn to the field of microwavable venting food containers and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the materials for the lid and base material in the container of Oshima et al. by using different colors as taught by Tucker for the purposes of imparting indicating means for informing the user if the container is opened or closed.

Modified Oshima et al. does not disclose the particular opening indicator as instantly claimed, although the Tucker reference shows the advantage of an opening indicator in general for a microwave container. Ewan discloses a marking indicator which indicates whether a flap on a package is open or closed (See Abstract, Fig. 1-4). The indicator is provided by printing various pigmented layers of varying adhesive strength (Fig. 5-7, C5, L5-C6, L20). When the package is opened the printed layers separate in a manner that provides each flap with pigmented areas and void areas which are the negative image of each other (Fig. 7). Both the pigments remaining on substrate 22 and the pigments remaining on substrate 24 are "printed layers" in that they are initially printed only onto substrate 24 and then printed onto substrate 22 when the flap is folded down (Fig. 5-7). It is also noted that the layers do not need to be printed since the "printed layer" limitation is given limited patentable weight (See Examiner's Note above).

It would have been obvious to have provided the indicating means of Ewan in between the two layers of modified Oshima et al. in order to not only indicate when the container is opened by steam, as taught by Tucker, but also to indicate if there has been any tampering with the seal of the container prior to purchase by the consumer (as evidence by whether or not the adhesive is broken).

Regarding claims 3, 6, 11, 14 and 15, modified Oshima et al. discloses all of the limitations as set forth above. Oshima et al. discloses the vapor release seal part is formed continuously along a peripheral edge seal of the container (Fig. 1). A plastic pouch is also disclosed in the invention of Oshima et al. (Fig. 6). The seal portion of the tray embodiment of Oshima et al. has flange parts and a lid with the heat seal part extending towards the inside of the container (Fig. 1 and C2, L5-25).

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshima et al. (U.S. 4,834,247) in view of Tucker (U.S. 2003/00155354) and further in view of Ewan (U.S. 5,294,470) as applied to claim 1 above and further in view of Isakson et al. (U.S. 4,640,838).

Regarding claims 7 and 8, modified Oshima et al. discloses all of the limitations as set forth above. Modified Oshima et al. does not disclose that the valve member be separate from the peripheral edge or any particular indicia. Isakson et al. discloses a valve for a hermitically sealed pouch which is not located along the periphery (See Abstract and Fig. 2). The valve is of a similar type as that of Oshima et al. in that it is a flap held with an adhesive which is designed to disengage upon microwave cooking (Fig. 5 and C5, L15-45). The embodiment of Isakson et al. in Fig. 6 comprises a slit. The placement of the valve a distance away from the peripheral sealed edges of the container allows for food inside the container to be contained more effectively even after the valve is opened by the steam pressure (i.e. if the valve were along the side sealed edges when the container were removed from the microwave liquid could spill out the sides).

The inventions of both modified Oshima et al. and Isakson et al. are drawn to the field of microwaveable vented containers and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the vent placement in the container of modified Oshima et al. by placing the valve a distance from the edges of the container as taught by Isakson et al. for the purposes of imparting improved food containing ability when the valve is opened.

7. Claims 9, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshima et al. (U.S. 4,834,247) in view of Tucker (U.S. 2003/00155354) and further in view of Ewan (U.S. 5,294,470) as applied to claims 1 and 11 above, and further in view of Sato (GB 2,358,175).

Regarding claims 9, 10, 12 and 13, modified Oshima et al. discloses all of the limitations as set forth above. Modified Oshima et al. does not explicitly disclose the limitations of claims 9, 10, 12 and 13. Sato discloses a standing, branched base type microwavable pouch (Fig. 1) with a cutout portion (Fig. 4) for the venting seal (See Abstract, part 21 is the exhaust opening) which can be used as a pouring port (Fig. 5). The pouring port is utilized by bisecting the two joining films which make up the vent. The invention of Sato is directed towards a specific marketable embodiment of a vented microwavable pouch which is directed towards the sterilization of, inter alia, baby feeding apparatuses (Page 1).

The inventions of both modified Oshima et al. and Sato are drawn to the field of microwavable venting pouches and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the pouch of modified Oshima et al. by using the pouring application of the vent port as taught by Sato for the purposes of imparting improved utility and marketability as a sterilization tool.

#### ***Response to Arguments***

8. Applicant's arguments filed on 08/05/09 are considered moot in light of the new grounds of rejection which were necessitated by applicant's amendments.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/  
Supervisory Patent Examiner, Art Unit 1794

/MN/  
10/05/09